

REMARKS

Claims 1, 3 – 8, and 10 – 18 are pending in the present application. Claims 1, 6 – 8, and 12 – 13 have been amended to further clarify features associated with the air bubble, internal chamber (R''), and the external chamber (R') and to make all references to the dip tube (N) consistent in the claims. Support for the amendments can be found in the figures in the specification, and paragraph [0098] of the patent application. Fig. 20 has been attached with all of the features contained within the claims combined on one single drawing to aid in examining the present application.

Improper Final Office Action

Applicants respectfully submit that the present Office Action should *not* be made **final**. According to § 706.07 (a) of the MPEP, a second office action on the merits should not be made final if it includes a rejection, on prior art not of record, of any claim amended to include limitations that should reasonably have been expected to be claimed. The amendments that were made in the prior response were made to better clarify the relationship between the parts and how the “siphon” R operates by using the “bubble.” Applicants respectfully submit that the amendments made in the last response to office action should reasonably have been expected by the Examiner. The amendments were made to clarify the features that were previously described in the specification and clearly illustrated in the figures. The external chamber R' and the internal chamber R'' were present in the originally filed claims 12 – 14. All new references were cited in the present office action with all new grounds of rejections. Applicants respectfully request the finality of the Office Action be removed.

35 U.S.C. § 103 Rejections

Claims 1, 3, 5 – 8, 10 – 13, 15, and 18

Claims 1, 3, 5 – 8, 10 – 13, 15, and 18 are rejected under the provisions of 35 U.S.C. § 103(a) as being unpatentable over Fr. Pub. No. 2,711,305 by Capy et al. (hereinafter “Capy”) in view of U.S. Patent No. 3,814,292 issued to Dargols et al (hereinafter “Dargols”) further in view of U.S. Patent No. 5,361,946 issued to Ginther et al (hereinafter “Ginther”) and furthermore in view of U.S. Patent No. 5,413,251 issued to Adamson et al (hereinafter “Adamson”).

Many claimed features of the present invention are missing from Capy. As admitted by the Examiner on page 3 of the Office Action, Capy does not teach, at a minimum, the use of two interconnected containers or the use of the air bubble to prevent leakage through the sprayer. Furthermore, Capy fails to disclose resting the apparatus on the forearm of the user when spraying.

The Examiner has cited several references that, in his opinion, when combined with Capy, contain all of the features claimed in the present invention. Applicants respectfully disagree and submit that the subject matter of the present invention is not obvious in view of the cited references and is patentably distinct from the subject matter of the references cited by the Examiner.

To establish a *prima facie* case of obviousness, the Examiner must demonstrate three elements: some suggestion or motivation to modify or combine the reference teachings, a reasonable expectation of success, and the combined prior art references must teach or suggest all the claim limitations. Applicants respectfully submit that the Examiner has failed to establish a *prima facie* case of obviousness.

Capy

Turning to Capy on its own, Capy discloses a U-shaped container intended to contain drinking water that also includes a means to refresh the holder by spraying water in his face for an instance. The container as per Capy is not normally inclined downwards to spray vegetation. Furthermore, inclining a container as per Fig. 1 with the sprayer directed downwards would still bring liquid in contact with the sprayer (i.e., the leakage problem would not be solved). The Capy device serves different purposes than the present invention and is substantially different from the device of the present invention. The Capy sprayer 7 is in contact with the liquid when the sprayer is inclined, which would leak like most other prior art sprayers. Most importantly, Capy does not have a conduct (G) that is shaped and sized to link two containers (Q and R') together through a swan-neck or U-shape that enables air pressure and the fluid to be dispensed to be exchanged as to form an air bubble next to the trigger sprayer (H) so that the trigger sprayer (H) does not come into contact with the fluid to be dispersed, as recited in Claim 1. Capy does not teach the use of an internal chamber (R'') as in Claims 12 – 14, nor does Capy teach the use of an external chamber (R') being in the shape of a hand grip as in Claim 15.

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Dargols

The first reference that the Examiner combined with Capy to try to piece together all of the features of the present invention is Dargols. Dargols relates to a demineralizing/filter spray dispenser. The Examiner remarked that Dargols teaches the use of an external chamber and a conduct, but does not teach the use of an air bubble. Dargols does not teach, show, or suggest the U-shape with the advantage of no liquid contact with the sprayer when inclined. Unlike the present invention, the fluid does not flow freely between the two containers 4 and 5. In Dargols, the fluid starts in 4 and then passes through a filter cartridge 7 and screen 8 to remove minerals, etc. from the fluid before the fluid is sent to the second container 5. Dargols fails to teach the use of the air bubble to prevent liquid from coming into contact with the trigger sprayer when the dispenser is inclined. As another difference, the trigger sprayer in Dargols is not connected to an internal chamber R'' (as in Claim 12), as it is in the present invention. Lastly, Dargols also fails to teach resting the apparatus on the forearm of the user when spraying.

Applicants respectfully submit that there is no motivation to combine all of the references, as suggested by the Examiner. The fact that references *can* be combined or modified does not render the resultant combination obvious unless the prior art suggests the desirability to combine the references. See § 2143.01 of MPEP. When determining if an invention is obvious, the question is not whether the differences would have been obvious, but whether the claimed invention *as a whole* would have been obvious. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983). Applicants respectfully submit that the Examiner is concentrating on the differences between the present invention and the cited references, not the claimed invention as a whole. Even if the combination of Dargols with Capy was deemed proper, the combination of the two would not contain each of the recited elements of the present invention, nor would the combination solve the problem(s) that the present invention sought to overcome. The Capy/Dargols combination would not be successful at overcoming the problems that the current invention has been able to overcome. Furthermore, neither Capy nor Dargols, alone or in combination, teach all of the claimed elements of the present invention. The combination of Capy and Dargols does not teach the use of the air bubble at the fixing point or connecting the trigger sprayer to an external chamber (R'), as recited in amended claim 1. Because there is no motivation or suggestion to combine the teachings of the references, no likelihood of success, and the combination of the references would not teach each of the claimed

elements, Applicants respectfully submit that the present invention is not obvious in view of the cited prior art references Capy and Dargols.

Adamson

The next reference that the Examiner combined with Capy and Dargols to try to piece together all of the recited elements of claim 1 is Adamson. Adamson discloses a liquid soap dispensing device for mounting on a wall. The Examiner remarked that Adamson teaches the use of an air bubble. Again, Applicants can find no motivation to combine the references, as done by the Examiner. The cited references, alone or in combination with each other, are far from being obvious because major adaptations are required to each of the sprayer assemblies to make them combinable. Even if the combination of Ginther with Capy and Dargols was deemed appropriate, it still would not teach each element of the claimed invention.

As a primary difference, in Adamson, the air bubble functions differently than the air bubble in the present invention. Because of the structure in Adamson, the air bubble in Adamson is not in direct contact with the sprayer, as in the present invention. As described in col. 3, lines 32 – 52 of Adamson, the air bubble “burps” around the curved portion of the reservoir transition area from the dispensing reservoir 40 to the supply reservoir 38 to equalize the pressure within the supply reservoir 38. The air bubble makes its way to the top of the reservoir to permit fluid in the supply reservoir 38 to drop down under gravity—feed into the dispensing reservoir 40. The air bubble maintains constant atmospheric pressure within the bottle without collapsing the bottle, while simultaneously taking advantage of the vacuum effect in the area 54 to prevent liquid in the bottle from flowing through and out the pump mechanism 32. The fluid is in direct contact with the pump mechanism 32. The vacuum effect is what prevents the fluid from leaking, not the air bubble being located in direct contact with the pump mechanism 32.

In contrast, the air bubble in the present invention provides a buffer between the fluid to be dispersed and the trigger sprayer to prevent the fluid to be dispersed from coming in direct contact with the trigger sprayer when the dispenser is inclined. Figs. 1 – 14 show the location of the air bubble (air chamber A) when the dispenser of the present invention in various positions. In the upright position, air accumulates in the upper regions of the external chamber (R'). When the dispenser is tilted, the fluid travels to this upper region of the external chamber (R') and imprisons an air bubble between the fluid and the trigger sprayer, which prevents the fluid from

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contacting the trigger sprayer and leaking out of it. The air bubble is located at the fixing point within the external chamber (R') and is in direct contact with the trigger sprayer, as shown in Figs. 1 – 14. The fluid can still be dispensed because the dip tube (N) extends into the external chamber (R') that still contains fluid.

It appears that one of the reasons that the air bubbles function differently in Adamson and the present invention is that the two dispensers are different. As recited in amended claim 1, the air bubble forms around the fixing point that is contained within the external chamber (R'), or in the internal chamber (R'') when it is present, as in claim 12 and Fig. 20. The present invention is mobile in that the position of the dispenser is changed frequently by picking up the dispenser, setting it back down, and inclining it to spray objects. The air bubble is ultimately located in the external chamber (R'), which is in direct contact with the dispensing mechanism. In contrast, the dispenser in Adamson is stationary, so it does not have the same problems associated with it that plague most mobile dispensers. The air bubble in Adamson is ultimately located in the supply reservoir 38, which is not in direct contact with the dispensing mechanism. If the air bubble in Adamson was used in the present invention, it would simply travel from the external chamber (R') to the container body (Q). If you used the air bubble and the accompanying structure from Adamson in the present invention, the dispenser would not function the same as it does in the present invention.

Besides the independent claims, Adamson fails to teach many of the elements of the dependent claims, as well. For example, Adamson does not contain an equivalent structure for the internal chamber (R'') as in Claim 12 of the present invention. When the internal chamber (R'') is present, the air bubble is present within the internal chamber (R''). As another example, Adamson fails to teach the use of an external chamber (R') being in the shape of a hand grip as in Claim 15.

Because there is no motivation or suggestion to combine the teachings of the references, no likelihood of success, and the combination of the references would not teach each of the claimed elements, Applicants respectfully submit that the present invention is not obvious in view of the cited prior art references Capy, Dargols, and Adamson.

Ginther

The Examiner further combined Capy, Dargols, and Adamson with Ginther. Ginther discloses a cake icing material dispenser that can rest on the forearm of the user. As indicated previously, it is envisioned that the present invention will be used to apply treatment chemicals to vegetation, such as pesticides and the like. Most of the fluids to be dispersed in the present invention are in liquid form. The Examiner combines the teaching of Ginther with Capy, Dargols, and Adamson to allegedly anticipate Applicant's claims. Again, Applicants can find no motivation or suggestion to combine the teachings of Capy, Dargols, and Adamson with Ginther. Even if the combination of Capy, Dargols, with Adamson and Ginther was deemed proper, the combination of the four would not contain each of the recited elements of the present invention, nor would the combination solve the problem(s) that the present invention sought to overcome. Inclining the Capy/Dargols/Adamson combination dispenser as per Ginther would lead to leakage at the level of the sprayer, which defeats one of the goals of the present invention. Because there is no motivation or suggestion to combine the teachings of the references, no likelihood of success, and the combination of the references would not teach each of the claimed elements, Applicants respectfully submit that the present invention is not obvious in view of the cited prior art references Capy, Dargols, Adamson, and Ginther.

Besides the independent claims, many of the features described in some of the dependent claims are also missing from the prior art references, as previously indicated. For example, claims 12 – 14 recite the use of an internal chamber (R'') that is lodged within and openly connected to the external chamber (R') so that the air bubble is located within the internal chamber (R''). As another example, with respect to claim 15, the Examiner remarked on the top of page 5 that Ginther teaches the external chamber of the coaxial tube to be shaped in the form of a handgrip. Applicants respectfully submit that the handgrip 18 in Ginther is not a container that holds the material to be dispersed, it functions as a handle to grip while holding the apparatus and also as an opening to allow the air hose 20 to pass therethrough (see col. 4, ll. 25 – 27). The material to be dispersed is not contained within the handgrip/handle 18, as it is in the external chamber R' of the present invention.

Applicants respectfully submit that the Examiner has failed to supply any suggestion or motivation to combine the teachings and suggestions of the cited references, as advanced by the

Examiner, except from using Applicants' invention as a template to create an impermissible hindsight reconstruction of Appellants' claims. The Examiner has not provided a sufficient reason or explicit analysis of why the disclosures of the references should be combined. "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006). The Examiner has not provided any reasoning for combining the references. Furthermore, if the combination of references were deemed proper, the resulting apparatus would not be successful in overcoming the difficulties sought to be overcome by the present invention, nor would the combination contain each claimed element of the present invention.

Because the Examiner has failed to establish a *prima facie* case of obviousness, Applicants respectfully submit that the subject matter of the present invention is patentably distinct from the prior art references cited by the Examiner. Applicants respectfully request withdrawal of this rejection.

Dependent Claims

The Examiner has combined Capy, Ginther, Adamson, and various other prior art references to piece together the elements of the claimed invention. The arguments made with respect to the independent claim apply equally to the dependent claims. Claims 4, 14, 16, and 17 all depend from claim 1 and therefore incorporate the same limitations. Applicants respectfully submit that the dependent claims contain patentably distinct subject matter from the subject matter of the cited prior art references.

Summary

In summary, Applicants respectfully submit that the current Office Action should not be FINAL. Applicants respectfully requested that the finality of the Office Action be withdrawn.

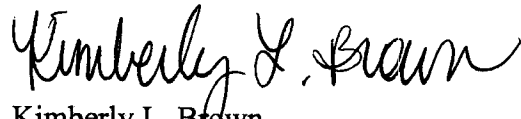
With respect to the rejections based upon the provisions of 35 U.S.C. § 103(a), Applicants respectfully submit that the Examiner has failed to establish a *prima facie* case of obviousness. Applicants can find no motivation or suggestion to combine the teachings of the cited references, there is no likelihood of success if the references were combined, and the

combination of the references would not teach each of the claimed elements. Accordingly, Applicants respectfully submit that the present invention is not obvious in view of the cited prior art references.

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Applicants believe that the present pending claims are in condition for allowance. Applicants respectfully request that the Examiner reconsider the rejection of the pending claims in light of the above analysis. In order to facilitate the resolution of any questions presented by this paper, Applicants request that the Examiner directly contact the undersigned attorney by telephone at 713-787-1554 to further the discussion, reconsideration, and allowance of the claims.

Respectfully submitted,



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